Exhibit H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
RYAN MELVILLE, on behalf of himself and other similarly situated,

Plaintiffs,

-against-

21 CV 10406
Conference

HOP ENERGY, LLC,

Defendants.
----------x

United States Courthouse
White Plains, New York
July 17, 2024

B e f o r e: THE HONORABLE VICTORIA REZNIK,
District Judge

APPEARANCES:
WITTELS MCINTURFF PALIKOVIC
Attorneys for Plaintiff Melville
18 Half Mile Road
Armonk, New York 10504
J. BURKETT MCINTURFF
DANIEL J. BRENNER
-and-
SHUB & JOHNS LLC
Attorneys for Plaintiff Melville
Four Tower Bridge
200 Barr Harbor Drive, Suite 40
West Conshohocken, Pennsylvania 19428
JONATHAN SHUB
SAMANTHA E. HOLBROOK

NIXON PEABODY LLP
Attorneys for Defendant HOP Energy, LLC
Exchange Place
53 State Street
Boston, MA 02109
MATTHEW T. McLAUGHLIN
KEVIN SAUNDERS

** Transcribed from digitally recorded proceedings **

THE DEPUTY CLERK: Good morning.

This is the Melville and Mullaney cases. Will counsel please introduce themselves starting with the plaintiff.

MR. McINTURFF: Good morning, your Honor.

This is Burkett McInturff on behalf of plaintiffs, Melville and Mullaney and the proposed classes in both of those cases.

And I also have with me on the line, my colleague, Dan Brenner from Wittels McInturff Palikovic.

MR. SHUB: Good morning, your Honor.

This is Jonathan a Shub from Shub & Johns, along with Samantha Holbrook from my firm. Together we represent plaintiffs along with Mr. McInturff.

THE COURT: Okay. Now for the defendant's side.

MR. McLAUGHLIN: Good morning, your Honor.

This is Matthew McLaughlin, and I'm joined with Kevin Saunders on behalf of the defendant.

THE COURT: Okay, so initially I scheduled this status conference so I could check in with the parties about discovery after receiving your joint status letter about the status of ESI discovery and the privilege review, and then I saw that there was a letter filed this morning by plaintiffs' counsel relating to a pending settlement in the Callery case and its potential impact on these cases.

So why don't I start by asking Mr. McInturff to give me an update on the status of discovery generally, and then how you think this new issue with the settlement impacts that.

MR. McINTURFF: Okay. Thank you, your Honor. This is Burkett McInturff.

In terms of the status of discovery, we had expected this call today to cover three topics, which is the timeline for the defendant to complete its document production, which was supposed to be completed in April; getting depositions scheduled. We have ten depositions that we've noticed and have been trying to get things scheduled. And then extending the August 9, fact discovery cutoff to account for the delays that have occurred with defendant's slow document production. So that's what we thought we would be talking about and still think that's what we should talk about today. Instead, as we -- as we noted in our letter, we found out from defense counsel yesterday evening that the settlement that they announced also yesterday afternoon in Callery seeks to extinguish the Melville and Mullaney classes. Defense counsel notified us on the call that he would be seeking a stay.

My first question was at least getting defense counsel to recognize that even if defendant sought a stay that no stay could be imposed unless and until the Court ordered one, which he agreed, but in terms of the next steps related to the Callery settlement, obviously, there is no stay application

pending. We will oppose any stay application.

As we said in our letter, we're evaluating our options now, because, again, we learned of this settlement yesterday evening. It's our position that the settlement is an overt violation of the Court's interim class counsel order which made it specific. It specifically appointed my firm and the Shub & Johns firm to negotiate any settlement affecting Melville and Mullaney.

Defendant has disobeyed that order and, you know, quite frankly, we have never seen this before. We've never seen a defendant settle a case out after interim class counsel has been appointed. So we are researching the remedies because between Mr. Shub's firm and my firm, we've never had this happen.

But again, from our perspective, what we need to talk about today is still getting a commitment from the defendant as to when it's finally going to finish its document production, setting a deadline for the defendant to schedule the depositions we've noticed. Again, we've noticed depositions. Defense counsel has told us that they're not available, but they haven't scheduled them. So we need to schedule them, you know, this week so that we can get them on the schedule, and then we need to figure out how much time is needed to complete fact discovery, which again, closes on August 9th.

It's plaintiffs' position before, before we learned

of the Callery settlement yesterday, we thought a reasonable extension would be 90 days, which would allow us to take the ten depositions, finish reviewing the million documents. Defendant has produced over a million documents. So we would complete our review of that in three months and then move on to the next steps of the cases.

Obviously, with the additional motion practice that's going to occur as a result of, you know, both the defendant's anticipated stay motion and any motion practice we engage in as a result of their violation of the Court's interim class counsel order is going to require, likely substantial additional resources and briefing so we believe at this juncture probably it makes sense to extend the fact discovery deadline instead of three months by four months, but a lot of that depends on how quickly the defendant is going to -- you know, do the discovery, undertake the discovery task it needs to do, which is, again, finish producing documents and scheduling the depositions that we've noticed.

THE COURT: Okay. Couple of questions for you.

First, what did you expect to happen after you were appointed interim class counsel in terms of a potential settlement in Callery?

With that in your pocket, what did you expect would happen rather than what did happen?

MR. McINTURFF: Well, no, under the law when you're

appointed interim class counsel to represent a proposed class, that no other counsel has authority to negotiate a settlement of that class. We didn't hear any -- we were never advised the settlement that the class was -- the class claims in Melville and Mullaney were being -- attempting to be settled. It was all done behind our back. So once we were appointed interim class counsel, we expected, as we've maintained all along that our case would be separate and severed from Callery and Callery was more than welcome to settle the claims of the capped-price customers that they brought. But we distinguished our cases. We brought separate cases. So we didn't -- you know, once the interim class counsel order was granted, we didn't have any inclination whatsoever that the class that we were authorized, solely authorized to negotiate for, would be settled behind our backs.

THE COURT: So you would expect to at least initially when you were briefing that motion, we had argument on it, there were settlement discussions among all parties in all the cases? So that didn't continue?

MR. McINTURFF: No, no. The settlement discussions -- during that period, there was a global settlement demand pending which was agreed to by all parties and then the defendant never responded to that demand. And then we learned -- we learned of the settlement which, obviously, it's not consistent with the global settlement

demand that was outstanding. We learned of this $2 million settlement yesterday.

THE COURT: And it's your understanding that this proposed settlement doesn't carve out the claims that were brought by the Melville and Mullaney plaintiffs.

MR. McINTURFF: Correct. In fact, it expressly includes them.

THE COURT: Okay. And in terms of the deadlines that you're seeking to extend, just remind me briefly. So August 9th was the fact discovery deadline. There was an ultimate discovery deadline that had been extended by Judge Karas to December.

Between August 9th and December, were there proposed dates for a briefing of -- or not a briefing, but expert discovery? Is that part of the plan that you'd have to try to --

MR. McINTURFF: Correct.

THE COURT: -- (indiscernible) before the end of the year?

MR. McINTURFF: Correct.

THE COURT: Okay. So the issue, at least with respect to extending the fact discovery deadline, assuming we get there, that's something I can do, but the problem is still that under Judge Karas' case management plan, he still has the ultimate say on whether your ultimate discovery deadline gets

extended beyond December 13.

So if I were to agree to extend your fact discovery cutoff as much as you say, that would necessarily bump into your expert discovery dates and, therefore, impact the ultimate discovery deadline of December 13, which I'm assuming you also would -- you would also be seeking to extend; am I right about that?

MR. McINTURFF: Correct, your Honor.

THE COURT: Right. So then essentially that means that the request to extend these deadlines ultimately would have to go to Judge Karas and not me. I don't control that. You would have to make an application to Judge Karas to explain why the ultimate discovery deadline needs to go beyond December 13th, in light of everything you've said. I can only manage sort of the interim fact discovery deadline for you. So that's sort of the first thing.

The second thing is, in your mind, while this motion to stay gets briefed, or there's other motion practice to address the Callery settlement, in your mind, you'd want to move forward with all the depositions and all the other discovery that's contemplated, or was the idea that you wanted this extension so that you had a breather while that motion practice is happening but still have discovery deadlines on the calendar?

MR. McINTURFF: No, no, no. We would need the

extension. Again, the issue was this document discovery should have, should have, you know, been completed a while ago and it hasn't been completed. But, no, we don't, we don't need a breather. In fact, we want to complete discovery in this case and continue to prosecute it as we've been doing.

We probably need additional time now because of the additional motion practice that is contemplated, but, no.

THE COURT: Okay. But you want to move forward with -- so the extension is both to address the fact that you need more time just to complete fact discovery and also building in extra time because of motion practice.

MR. McINTURFF: Correct.

THE COURT: Okay. So I'll turn to the defendants to respond.

Mr. McLaughlin, are you speaking on behalf of the defendant today?

MR. McLAUGHLIN: I am, your Honor.

THE COURT: Okay. Go ahead.

MR. McLAUGHLIN: I guess I'll go in order and respond as my notes reflected Mr. McInturff's points.

With respect to the discovery, the only remaining discovery is the linear privilege review that we are doing for the documents that were withheld based on the searches we ran in which we produced the millions of documents or pages of documents to plaintiffs months ago. So that's the only

remaining piece of document discovery. We are, I think, about two-thirds complete with that, but that is the only piece. We are sending them on a weekly basis any documents, and there aren't many, that after further review we determine are not privileged. So this is a very, very small piece of the document discovery that's left.

THE COURT: So when was that substantial production completed? Maybe you were doing it on a rolling basis, but before you started sending out documents that fell out of the privilege review, is there a timeline for when that document production had been completed?

MR. McLAUGHLIN: There was. I don't have it in front of me but it was -- it was months ago.

THE COURT: Okay. So months ago you produced a substantial portion of the documents. Since that time you've been reviewing documents that were captured by the privilege review and then producing on a rolling basis documents that fall out of that review that you determine aren't privileged; is that right?

MR. McLAUGHLIN: Exactly, your Honor.

THE COURT: Okay. And so what is the timeline then? So I guess -- what is the timeline of that document production being complete? I understand it's on a rolling basis but you said you're two-thirds done.

MR. McLAUGHLIN: We had -- during out -- before our

last status update to the Court, we had estimated, based on the progress by that point, to be -- have it complete later this week. We were a little too aggressive in our estimation. So we are probably weeks, at least three to four weeks away from fully completing that linear review of the privilege materials.

THE COURT: Okay. So that means what date are you estimating at this point to be done? And does that mean -- will rolling productions be happening during those three weeks or this is the last push?

MR. McLAUGHLIN: Well, yes. As we sit here today, we are continuing the review and we will continue to make the rolling productions.

But as Mr. McInturff alluded to, we will also be seeking, and that was an issue I wanted to raise, a stay of activity in Melville and Mullaney in light of the settlement, which I can talk about now, or I can talk about later. But so, you know, subject to that request, yes, we would continue our review and production of those privilege materials.

THE COURT: Okay. And then in terms of getting the depositions scheduled, which is the other issue that Mr. McInturff raised, putting to one side the stay issue, what has been the holdup in scheduling depositions? It sounds like the bulk of the documents have been produced a couple months ago.

So what needs to be done for depositions to be put on

the calendar, and can you explain any basis for the delays in that regard?

MR. McLAUGHLIN: Sure. I was surprised to hear that there's been delays. Mr. McInturff or Mr. Brenner literally served us the notices last week for the first time for depositions scheduled for this week and next week and so without any consultation of availability. Now, they said in their cover email that they would work with us on dates.

I reached out to them as part of call, our scheduled call yesterday, to discuss dates. They, and I'm not blaming them, because I also revealed to them that we have the settlement, they weren't prepared to talk discovery in light of the sort of the elephant in the room, the settlement. So we just haven't had a conversation about scheduling and coordinating depositions.

But I am prepared to do that. I'm not dragging my feet on that. We just got the notices.

THE COURT: I see. Okay. I didn't understand that.

And then -- so tell me about the settlement and tell me your position as to why it was negotiated so that it subsumes the Melville-Mullaney cases, or at least tell me, is that true?

MR. McLAUGHLIN: Sure. Yes. It is true. The proposed class would cover the purported Melville and Mullaney classes. But just for -- just for some context and to correct

at least one misstatement from my perspective that Mr. McInturff relayed, back in -- while -- while the plaintiffs' motion to be appointed interim class counsel was pending, and then if your Honor recalls, we had a -- it was preceded by a letter motion that we had a conference about it, and then full briefing before the Court made a decision, the parties, including plaintiffs in these cases and in Callery were engaged in continued global resolution efforts with Judge -- former Judge Diane Welsh of JAMS.

Those global settlement talks continued throughout the early part of this year. We had a status conference in the midst of the briefing on the interim class counsel motion with the court in Callery. We informed Judge Rufe of our ongoing global settlement talks, we informed Judge Rufe of plaintiffs' effort in New York to be appointed interim counsel.

Their request, I would note, in their proposed order wanted to give them sole settlement authority in the cases. Your Honor's order didn't do that. Your Honor's order made no such declaration, but Judge Rufe instructed us to continue to work on global resolution, if possible, but if we weren't able to do that, that we should try to resolve Callery. And so that's exactly what happened.

We continued after that February conference to work on a global resolution via Judge Welsh. At the end of April, Mr. McInturff made it clear that he did not view our global

settlement discussions as ongoing.

Judge Welsh declared an impasse. The holdup, based on, and it's in the plaintiff in Callery's motion papers, which I will provide for the Court, was the holdup was New York counsel. They essentially took themselves out of global settlement discussions.

Only after that point, and only after that point, did we pick up settlement discussions with plaintiffs' counsel in Callery. We retained Judge James Giles, the former judge of the Eastern District of Pennsylvania, who had previously been appointed the Special Master by Judge Rufe in the Callery case and who was familiar with the facts of the case in that role to try to mediate a settlement in the Callery case and we were able to reach a settlement after those efforts.

The settlement, I should note, is -- and I believe we have related this to your Honor, but the settlement is basically the remaining insurance proceeds from the insurance policy that is available for funding the defense costs in this case.

The defendant's financial position is dire. We shared information with respect to its financial condition with both plaintiffs' counsel in Melville and Mullaney, and plaintiffs' counsel in Callery. We made no secret of the situation that my client was in. The situation was only getting worse as months passed, and the reality is, and as the

plaintiffs' Callery's forensic accountant expert report that was filed in connection with the motion for approval papers yesterday, indicates this is the -- this is really all that can be used to fund the settlement, the remaining insurance proceeds.

The settlement -- the insurance proceeds, are wasting though. Every dollar that gets spent on continued defense costs comes out of the settlement fund that would otherwise pay the class members. So the resolution is for essentially HOP to tender the remaining limits of the policy to settle the case.

But the notion that I violated or thumbed my nose at this Court's order, I strongly reject that. We made every effort to include plaintiffs' counsel in these cases in the settlement negotiations. We invited them to join the original mediation before Judge Welsh. We worked with them for months and months after that and only when they -- they essentially selected out of the continued negotiations did we move forward with a Callery settlement. And there was nothing in your Honor's order that purported to limit it anyway, the Callery litigation, and it's -- I'm not disputing that Mr. McInturff or Mr. Shub may not have dealt with this scenario before, but it is not an unusual scenario that even when interim class counsel is appointed in one case, that a settlement can be brokered in another pending case, and that settlement is allowed to move forward. And the case in which interim class counsel was

appointed, even if the settlement impacts those claims, there's nothing improper about moving forward with settlement discussions in a totally separate case.

So that's all that happened here. I mean, this was not a -- this is not an effort to exclude New York counsel, this was -- this was the result only after including them as much as we could.

MR. McINTURFF: Your Honor.

THE COURT: Let me just ask --

MR. McINTURFF: May I respond to this?

THE COURT: You can, but let me just ask Mr. McLaughlin.

So did you -- what did you think was the import of having Mr. McInturff and Shub & Johns, that those two firms be appointed as interim class counsel? What did you think the affect of that was?

MR. McLAUGHLIN: I understood, your Honor, that they were appointed interim class counsel over the Melville and Mullaney purported classes in these cases, but that that did not impact the first filed, separate Callery case that was proceeding -- they were not consolidated in any way.

These -- we're, obviously, not in the MDL. It was a totally separate litigation and I did not view that order as requiring me, for example, not to -- not to heed the directive of Judge Rufe to continue to trying to work on a settlement of

Callery, if the interim class in Melville and Mullaney weren't interested in further negotiations. So I understood that they were appointed interim class counsel in Melville and Mullaney but we -- it's not true that we are expressly wrapping into Callery, Melville and Mullaney, it's we are settling the Callery class as, you know, as was alleged initially.

It's the class that plaintiff in Callery asserted years before the Mullaney case and a year and a half before the Melville case was even filed. So that, in my view, is not inconsistent with your Honor's order.

THE COURT: Okay.

MR. McINTURFF: Your Honor --

THE COURT: Mr. McInturff, go ahead.

MR. McINTURFF: Yes, please.

And I'm also going to let my colleague, Mr. Shub, intervene because he was dealing closely with Judge Welsh.

But if I could just correct some of the most outlandish statements that defense counsel has made.

The first one being that they settled the class that Callery initially pled. Callery pled an opt-out class of Pennsylvania residents that sought to include any -- sorry, I apologize, an opt-in class of non-Pennsylvania residents, so it was a class of Pennsylvania residents, and then any other resident from another state could affirmatively opt in. That's the class that Callery originally pled.

Callery is also a capped-price customer. Defendant moved to stay this case over a year ago claiming that the cases were overlapping. Judge Karas denied that stay. It's completely absurd to say that they're just simply settling the original case that Callery brought.

Callery also spent two years trying to get back to state court. You can't settle a multi-state federal class action in state court. And the notion that we were -- that we were invited all along to participate in their settlement is completely ridiculous and, honestly, I have never heard such -- such statements from a member of the bar. It really, really is astonishing.

But I'll let Mr. Shub fill you in a little bit more about what actually transpired here.

MR. SHUB: Hi, your Honor. This is Jonathan Shub.

So, I mean -- just take a step back. This is a classic, classic reverse auction race to the bottom situation. HOP knew that we were appointed, over their objections you'll recall, appointed interim class in the New York cases.

It is true, your Honor, that we were participating in settlement discussions. We, on behalf of the New York cases, determined that the settlement funds that HOP was making available was insufficient. It still is insufficient. HOP has viewed this case as if the insurance policy is the outer bounds of what they can pay in this case. That's an outrageous

assertion to begin with because their insurance policies have no impact on their ability to pay. That's just what they would like to pay.

So when the settlement negotiations broke down, they then approached counsel in the Callery case, okay, in an attempt to go around us, behind our back, and settle our cases because we wouldn't agree to their lowball offer. Callery, they found a very willing participant in the Callery counsel to do that.

But in order to do that, they would have -- they had to amend their complaint, come up with a new class, this was not Callery's class as Mr. Burkett -- Mr. McInturff pointed out. Judge Karas already rejected the fact that the Callery class somehow overlapped and consumed ours. They have now made the Callery class overlap and consume ours, because they weren't happy that we didn't want to accept their lowball offer.

Callery can do what they want in their case; that's their business. We don't represent fixed-price customers, Callery does. But for them now to come in here and say that they can just flaunt an order by this Court that sought to do exactly what we were seeking, that is to protect the New York cases from being settled out from under our protections is frankly outrageous. You know, this is not a situation where we were all together and we decided to do this. They went behind

(inaudible) friendly counsel in a reverse auction. It's classic.

And your order, your Honor, frankly, was rightfully entered so as to try to prevent exactly what happened and we find it to be, frankly, astounding that counsel would come in here and somehow say that they didn't violate the order. And-- it's really astounding to me.

THE COURT: All right.

MR. McLAUGHLIN: Can I respond, your Honor?

THE COURT: Yes. Go ahead, Mr. McLaughlin.

MR. McLAUGHLIN: So first of all, with respect to this notion that Callery was a state court case, your Honor may recall, this was raised early on in the motion for interim counsel briefing and discussion. The attorney in the Callery case advised both me and the judge that she would be amending her complaint to comport with Rule 23, because once Judge Rufe ruled that the case would stay in federal court, obviously, Rule 23 applies and not state court rules, and your Honor pointed that out on one of our last conferences.

The only reason that complaint was not filed previously was because the parties agreed to preserve resources while we were working on settlement, so the idea that this was a last minute, let's turn this into -- from a state court case to a federal case, is totally belied by the record in the case.

Secondly, Mr. Shub is not correct that we excluded

them in any way from the settlement. It is true that their position was they didn't agree with the financial -- they didn't agree with the consolidated financial statements in what they said, for some unknown reason, but it is absolutely the case that they were invited, that Judge Welsh tried to move New York counsel from their settlement position in order to continue the negotiations, and she declared an impasse as a result of their failure to move any further.

So this was not a strategy by HOP. This was not a strategy by Callery. We had no -- we had every intention of trying to resolve this case globally. That's always been our intention. It was only when it was made clear to us that New York counsel was not willing to move from their settlement position that we moved forward with trying to resolve Callery.

And from the plaintiffs' perspective in Callery, it was because the funds available that would be distributed to the class were continually being depleted by Mr. McInturff's firm and Mr. Shub's firm in these litigations.

THE COURT: Okay. And was there any discussion in settling Callery to carve out the Melville and Mullaney cases, those classes?

MR. McLAUGHLIN: No, your Honor, because the Callery claimant -- I think I've been consistent about this and I think your Honor noted it -- the complaint as alleged -- from the original complaint, it subsumed the defined Melville -- they

want to say it was a capped -- it's limited somehow to a capped contract. The capped contract involved in Callery, the plaintiff in that case, also has the prevailing, the prevailing price concept, which is the exact claim that the Melville complaint and the Mullaney complaint allege.

So, no, there was not an attempt to carve it out because from the plaintiffs' perspective in that case, they already filed a claim on behalf of those individuals.

THE COURT: Okay. Well, let's take, I guess, one thing at a time.

The first thing is you'd like to -- you indicated that you are hoping to move to stay. Is that right? Pending the --

MR. McLAUGHLIN: Yes, your Honor.

THE COURT: Okay. So I guess first thing is it seems to me that we need to set a briefing schedule on that. Again, I'm not going to decide that just on this call, based on, you know, an inclination that you plan to stay. So given all the moving parts, what do you propose -- when would you -- what do you propose or have the parties talked about what a briefing schedule would look like? And I assume it would be expedited in light of all the things that are going on in the case.

MR. McLAUGHLIN: Your Honor, we have not discussed -- I have not discussed the schedule. On the call yesterday they indicated they would not agree to a stay, but I am -- yes,

you're right, we would like an expedited briefing schedule, as expedited as possible, because, again, every -- every additional dollar spent comes out of the settlement fund. And so we think it's important for a stay to be -- at least the Court to hear the argument.

So, you know, I can -- I can file something as soon as -- yeah, I could try to get it done today. I'd like, by at least tomorrow to be able to file the motion, if that's possible.

THE COURT: Okay. And Mr. McInturff, how long would you want to respond?

MR. McINTURFF: Let me confer briefly with my team, whose blood, sweat and tears would go into this.

THE COURT: Okay.

MR. McINTURFF: Hold on one second. Your Honor, I'm going to confer off line, so I'm going to mute my phone.

THE COURT: Understood, go ahead.

(Pause)

MR. McINTURFF: So your Honor, we're talking the defendants would file their papers on the 18th?

THE COURT: Yeah, I was going to say no later than Friday, July 19th.

MR. McINTURFF: Okay. Well, so maybe ten days from the 19th? I guess that's Wednesday, the 31st.

THE COURT: Okay.

MR. McINTURFF: Actually, we have a filing in another matter on the 31st. Could we do August 1?

THE COURT: Okay.

MR. McLAUGHLIN: Your Honor, if I could just -- I mean, that's not really expedited. That's not much different than the normal motion Rule 6.1 under the Federal Rules would provide. But if they need additional time --

MR. McINTURFF: With all due respect, your Honor.

MR. McLAUGHLIN: -- to stay -- excuse me.

MR. McINTURFF: Your Honor, this was sprung on us yesterday. This -- we were not informed of any ongoing settlement discussions. We were told yesterday that on a call where Mr. McLaughlin emailed us and said, let's set up a call to schedule depositions. And instead he opened the call with we've settled your case out.

With all due respect, we didn't expect to be briefing a stay motion when we got on the call yesterday at 5:30.

THE COURT: Okay. Well, so Mr. McLaughlin, what were you saying?

MR. McLAUGHLIN: Could we at least have an agreement that no depositions will take place or try to be scheduled in this period while the briefing --

MR. McINTURFF: The law is clear, your Honor, that no stays are imposed just because the defendant moves for a stay. I mean, this is the reverse auction playbook. This is it.

They're doing every single thing that is in the playbook. Go settle on the cheap, then move for a stay and grind everything to a halt.

Judge Karas already rejected this ploy years ago. The Court entered an interim class counsel order to avoid this. We predicted it. Your Honor will recall that you asked Mr. McLaughlin point blank whether he was going to reverse auction this case and he equivocated. Your Honor noted that in the interim class counsel order.

So we strenuously object to the idea that discovery gets stayed while we brief their motion, which Mr. McLaughlin agreed yesterday on the call is not the law in this circuit. There's a law in this --

THE COURT: Your Honor, this McInturff --

MR. McINTURFF: (indiscernible) no stay until the stay is granted. And it's not going to be granted in this case. This is a -- this is an attempt to extinguish more than $100 million in liability that was taken from tens of thousands of customers for $2 million in another case that has been languishing in Pennsylvania for four years. That's what this really is, your Honor.

THE COURT: So Mr. McLaughlin, Mr. McInturff is proposing August 1. Would you need a reply? I'm assuming you'd want a reply.

MR. McLAUGHLIN: Just, if I can -- your Honor, yes, I

would like at least a couple days to reply but I just -- he started off this call explaining how they needed more time to do discovery because of our alleged document production, and so I just think this is bad faith to suggest that they're going to move forward, where at the beginning of the call they were looking for an additional 90 to 120 days in discovery, but now, when presented with a motion to stay, they want to ram depositions through in the next couple of weeks.

MR. McINTURFF: No. That's not -- your Honor, if I could correct --

MR. McLAUGHLIN: Could you stop interrupting me, Mr. McInturff?

MR. McINTURFF: No, no, no.

MR. McLAUGHLIN: Mr. McInturff, I didn't interrupt you.

MR. McINTURFF: Because you're misrepresenting --

MR. McLAUGHLIN: Stop interrupting me.

THE COURT: Counsel, we can't proceed if you all are arguing over one another. I'll give you an opportunity to speak.

So, Mr. McLaughlin, I understand your position. Your view is there's no reason to rush depositions in this interim period of briefing this motion to stay because you already -- you still have more documents to produce and you're in the process of negotiating deposition dates, or at least you only

got notice recently.

So your point is, as I understand it, that it's sort of early in the deposition scheduling process in any case, right?

MR. McLAUGHLIN: Yes.

THE COURT: So, Mr. McInturff --

MR. McLAUGHLIN: Or the schedule should be abbreviated, if that's -- you know, if they won't agree, then they shouldn't get ten days. They should have -- we should have a real expedited briefing schedule.

THE COURT: Okay.

Mr. McInturff, do you have anything more to say about that?

MR. McINTURFF: To respond, they produced millions of pages of documents in May, in mid-May, is when we got their production. We have been -- since that time we have been working on a document production. Prior to that, they had not -- they had not made a meaningful document production.

The idea that because we -- because I have a filing in another case and need ten days for our team to respond to a stay motion that they sprung on us requires us to do anything in discovery differently than what we've been planning to do, is simply unfair. The point is, look, if Mr. McLaughlin can't -- we've accommodated defense counsel's schedule for years now and been very lenient -- if they can't manage to

schedule a deposition during the briefing period, you know, we will -- we will accommodate their schedule -- but, frankly, this is a game they're playing. This is a game.

THE COURT: Let me -- I think I've heard enough to sort of set down some deadlines and guidance about what comes next. But before I do that, actually one other question.

Are there any other potential motions that anyone -- so we're just dealing with the motion to stay; is that right?

MR. McINTURFF: Well, we don't know -- again -- again, Mr. Shub and I have collectively done class actions for about 45 years, and we've never seen it where a defense counsel violates an interim class counsel order and then -- and then tries to settle the case out. So we are likely to engage in some sort of motion practice.

We mention in -- we cited in our letter this morning Judge Reyes' order in a -- in a class which we were -- my firm was -- the case was certified against another energy company like HOP, and my firm was appointed counsel and we had a similar defendant that was suggesting they were going to reverse auction our case and Judge Reyes suggested that if that occurred, we would move for sanctions. So that's one thing we're contemplating.

We also cited in our letter that there's a potential to hold defendant in contempt of court, but again, we learned about this as 5:30 right before I had to go pick up my kids

from school that this -- our case had been settled out from under us. So we're doing research as to what the appropriate response is.

THE COURT: Okay. Well, at this point you don't have -- you're still working on what you want to do in terms of further motion practice, but that's something you will address with me shortly, it sounds like.

Okay. So let's -- so for the time being, let me start at one issue at a time.

In terms of the outstanding document production which relates to the privilege review, Mr. McLaughlin indicated that that's nearly complete, so offset a deadline for that final production to be made by August 9th.

In terms of a briefing schedule, let me say that we were already talking about a briefing schedule for the motion to stay by no later than Friday, July 19. The moving papers will be filed and opposition will be filed by no later than August 1st and a reply no later than August 8th. You're free to file it before that date, that's just a no later than filing date.

There will be no stay of discovery while the motion is briefed or pending. Discovery will continue, which includes the timeline of document production that I outlined August 9th.

Similarly, in terms of depositions, the parties should continue in good faith to meet and confer and schedule

depositions. That doesn't mean they have to be scheduled during the briefing of this motion for a stay, but the parties should be endeavoring to get depositions on the calendar.

In terms of extending the fact discovery deadline, I can agree to extend that deadline on an interim basis while things are playing out for two months. So that would mean August, let's see -- August 8th -- so I'll extend the interim to, I guess, October 10th. But the understanding is that that would necessarily bump up against the ultimate deadlines that you currently have in your case, December 13th, unless the parties could work out getting expert discovery done within those couple of months.

So it will necessitate eventually going to Judge Karas to extending our ultimate deadline if things continue in litigation and there isn't a stay in the case. But I will -- we can defer that to a later time while these other issues play out.

Let me see if there's anything else that needs to be addressed today. I don't think so.

Anything else that needs to be addressed today, Mr. McInturff?

MR. McINTURFF: Not from my perspective, unless Mr. Shub or Mr. Brenner have other items.

No, they're shaking their heads. So no.

THE COURT: Okay.

Mr. McLaughlin?

MR. McLAUGHLIN: No, your Honor. Thank you.

THE COURT: Okay. And in light of the timeline in this case, I will do everything in my power to get an answer to the parties on the motion very quickly, so it doesn't undermine the whole purpose of seeking a stay to begin with, so that you'll know either way.

So then we will adjourn for today without setting another conference date and I'll wait to hear from the parties by motion.

Thanks very much.

MR. McINTURFF: Thank you, your Honor.

MR. McLAUGHLIN: Thank you, your Honor.

CERTIFICATE: I hereby certify that the foregoing is a true and accurate transcript of the recorded teleconference to the best of my skill and ability.

Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY